

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/570,550

Filed: September 25, 2003

Inventors:

Rahul L. Shah

Title: METHOD AND SYSTEM
FOR BUSY PRESENCE
STATE DETECTION IN AN
INSTANT MESSAGING
SYSTEM

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Examiner: Joo, Joshua

Group/Art Unit: 2454

Atty. Dkt. No: 5681-69700

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I hereby certify that this correspondence is being transmitted via electronic filing to the United States Patent and Trademark Office on the date shown below.

Robert C. Kowert

Printed Name

August 12, 2009

Signature

Date

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated below.

Claims 1-42 remain pending in the application. Reconsideration of the present case is earnestly requested in light of the following remarks. Please note that for brevity, only the primary arguments directed to the independent claims are presented, and that additional arguments, e.g., directed to the subject matter of the dependent claims, will be presented if and when the case proceeds to Appeal.

Independent claims 1, 15, and 29 and various dependent claims are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Horvitz (U.S. Publication 2008/0104517) (hereinafter Horvitz) in view of Jackson et al. (U.S. Publication 2002/0152305) (hereinafter Jackson). The independent claims are also provisionally rejected on the ground of nonstatutory obviousness-type double patenting over application 10/670,549 in view of Horvitz. The following **clear errors** in the Examiner's rejection are noted.

Applicant submits that the cited references fail to teach or suggest all of the features of claim 1. Applicant notes that claim 1 requires, among other features, transitioning a presence state specific to an instant messenger client to a busy state in response to determining that an activity level of a computer system on which the instant messenger client executes exceeds an activity threshold, wherein the presence state corresponds to a given user. In rejecting claim 1, the Examiner contends that paragraphs [0063] and [0091] of Horvitz disclose this feature. Office Action at 6. Applicant respectfully disagrees and note that substantial differences exist between Horvitz's disclosure and the requirements of claim 1. Horvitz is generally directed towards a "communications architecture that facilitates ideal communication links between contactors and contactees." Horvitz at para. [0002]. In particular, Horvitz provides a contact manager (contact manager 30 of FIG. 1; contact manager 4140 of FIG. 52) configured to "make decisions regarding how to establish communication between the contactors and contactees in accordance with the communications preferences." *Id.* at para. [0055]. More specifically, Horvitz discloses that the contact manager attempts to "identify optimal communication modalities between two or more communicating parties." *Id.* at para. [0095].

Horvitz illustrates the relationship between various system components in FIG. 52. Here, Horvitz illustrates communication 4110 occurring between contactor 4120 and contactee 4130, subject to the input of contact manager 4140. It is communication 4110 that "may be achieved through a variety of modalities" that may include "instant messaging." *Id.* at [0096]. But as is shown in FIG. 52, communication 4110 is a distinct entity from contact manager 4140.

Applicant notes that claim 1 does not merely require the existence of an instant messenger client and some activity with respect to a presence state. Instead, claim 1 specifically requires "transitioning a presence state specific to [an] instant messenger client to a busy state" in response to a determination with respect to a computer system activity level. While Horvitz discusses various types of context states including "busy levels" at para. [0063], **Horvitz's context states are not presence states that are specific to an instant messenger client. Instead, they are defined only with respect to the contact manager system.**

Horvitz provides a specific example of the busy context state in FIG. 24, described at para. [0081]. Here, Horvitz shows a GUI that may be presented to a user to allow the user to alter presence, activity, or other context variables. However, there is no evidence in Horvitz that demonstrates that a user's manipulation of these variables within the context manager system results in a change in a presence state that is specific to an instant messenger client. In fact, the only extent to which Horvitz mentions

instant messaging at all is as one of many “modalities” via which communications may occur, along with email, telephony, and numerous other modes of communication. That is, in Horvitz, instant messaging is merely a conduit for communication. Horvitz omits any specific discussion regarding the internal details of instant messaging, much less the manipulation of presence states specific to an instant messenger client.

In response to the foregoing, the Examiner alleges that “[a]ccording to Horvitz, a client is able to communicate via instant messages and thus . . . is considered an instant messenger client. The state on the context system is representative of the particular client and adapted for the particular client. The state and transitioning states are specific to the client. . . . In addition, the manipulation of the variables results in a change in a presence state [that] applies to the particular client.” Office Action at 2. Applicant respectfully disagrees for at least the following reasons.

The state that Horvitz discloses is actually the state of a user of Horvitz’s system, independent of any particular communication modality. “[I]nterface users can define one or more states of busy-ness or availability, . . . [which] can be employed to enable users to generally define atypical or other context settings whereby the user is or is not in the defined state.” Horvitz at [0063]. That is, in Horvitz, the state of “busy” is specific to a particular user, and does not reflect the state of the instant messenger client itself.

The manner in which Horvitz utilizes this state information further illustrates that it is specific to the user and not to the client. State information is part of contactor data 4150. *Id.* at [0100]. Using the contactor data, Horvitz’s contact manager attempts to identify the optimal modality of communication for that user from among numerous possible modalities. *Id.* at [0102]; [0148] (modalities include “mail . . . , telephone . . . , paging, runners/couriers, video conferencing, face-to-face meeting, instantaneous collaborative editing”). Thus, contrary to the Examiner’s assertion, the user state in Horvitz is not representative of an instant messenger client or adapted for that particular client. Nor is the user state specific to any specific communication modality. Instead, it is representative of a user, and used to select one of many possible communication modalities.

Moreover, there is no indication in Horvitz that once a user’s state changes, the changed state “applies to the particular client,” as incorrectly assumed by the Examiner. Regardless of how Horvitz’s user state changes, the state still corresponds to the context the user is in at some time. Horvitz simply does not disclose how the presence state of an instant messenger client (i.e., a presence state that is part of

the IM client, controllable by the user, and visible to other users of similar IM clients) would change in response to the change in the user state—a distinct type of state within a distinct entity (Horvitz's contact manager system).

Applicant can find no language in the remaining cited references that remedies the omissions of Horvitz noted above. Similar arguments apply to independent claims 15 and 29, which recite features similar to those of claim 1. Accordingly, Applicant submits that the rejections of independent claims 1, 15, and 29 are unsupported. Applicant also notes that the rejections of various ones of the dependent claims are further unsupported by the cited references. However, as the rejections of the independent claims have been shown to be unsupported, further discussion of the dependent claims is unnecessary at this time.

In light of the foregoing remarks, Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested. If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 501505/5681-69700/RCK.

Also submitted herewith is a Notice of Appeal.

Respectfully submitted,

/Robert C. Kowert/

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